

Upon request of the district director, taxpayers must provide evidence, as provided in § 1.905-2(a)(2), that the tax withheld was actually paid to the foreign country. Although this regulation will be effective on the date that is 30 days after the date the final regulation is published in the Federal Register, it reflects an IRS requirement upheld as a reasonable interpretation of current law by the Tax Court and the Court of Appeals for the Seventh Circuit in *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991-66, 61 T.C.M. (CCH) 1916, 1939-42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516-17 (7th Cir. 1993).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS.

However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.905-2 is amended by:

1. Revising the second through fourth sentences in paragraph (a)(2).
2. Adding two sentences to the end of paragraph (b)(3).

The revision and addition read as follows:

§ 1.905-2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or withheld, or the return on which each such accrued tax was based if credit is sought for taxes accrued. This receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are effective for returns whose original due date falls on or after January 1, 1988. * * *

(b) * * *

(3) * * * Any foreign tax credit claimed for taxes withheld at the source is an interim credit and the taxpayer must prove that any taxes withheld at the source were paid to the foreign country, as required in paragraph (a) of this section. The preceding sentence is effective the date that is 30 days after the date this regulation is published in the Federal Register as a final regulation, however, for periods prior to the date that is 30 days after the date this regulation is published in the Federal Register as a final regulation, see *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991-66, 61 T.C.M. (CCH) 1916, 1939-42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516-17 (7th Cir. 1993), wherein the court upheld this rule as a reasonable interpretation of section 905(b) of the Internal Revenue Code.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

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26 CFR Part 1

[REG-209729-94]

RIN 1545-AS94

Self-Employment Tax Treatment of Members of Certain Limited Liability Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the self-employment tax treatment of members of certain limited liability companies that was published in the Federal Register on Thursday, December 29, 1994. The proposed regulations sought to provide guidance concerning the applicability of certain self-employment tax rules to certain members of limited liability companies. The IRS and Treasury have issued new proposed regulations that will provide guidance on this issue.

FOR FURTHER INFORMATION CONTACT: Robert Honigman, (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Thursday, December 29, 1994, the IRS issued proposed regulations (EE-45-94) relating to the self-employment tax treatment of members of certain limited liability companies (59 FR 67253). Upon consideration of the written comments received and the oral comments made at the public hearing held on June 23, 1995, the IRS has decided to withdraw those proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the Federal Register on Thursday, December 29, 1994, at 59 FR 67253, is withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

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